

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 24, 2007

PATRICK COLLIER v. CHERRY LINDAMOOD, WARDEN

**Direct Appeal from the Circuit Court for Wayne County
No. 14118 Stella Hargrove, Judge**

No. M2007-00777-CCA-R3-HC - Filed November 6, 2007

The petitioner, Patrick Collier, appeals from the circuit court's summary dismissal of his pro se petition for writ of habeas corpus. Following our review of the record and applicable law, we affirm the dismissal of the petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and ROBERT W. WEDEMEYER, J. joined.

Patrick Collier, Clifton, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; for the appellee, State of Tennessee.

OPINION

The petitioner was found guilty of first degree murder and attempted first degree murder following a jury trial in the Criminal Court of Davidson County. He was sentenced consecutively as a Range I, standard offender to life imprisonment for first degree murder and twenty-five years for attempted first degree murder. The petitioner's convictions and sentences were affirmed on direct appeal. *See State v. Patrick N. Collier*, No. 01-C-01-9303-CR-00093, 1993 WL 313609 (Tenn. Crim. App., Aug. 19, 1993), *perm. app. denied* (Tenn. Nov. 29, 1993). The petitioner was denied post-conviction relief. *Patrick Collier v. State*, No. 01C01-9509-CR-00314, 1996 WL 474010 (Tenn. Crim. App., Aug. 22, 1996), *perm. app. denied* (Tenn. Nov. 25, 1996). On December 22, 2006, the petitioner filed a pro se petition for habeas corpus relief. In its order filed on March 1, 2007, the circuit court dismissed the petition, finding no cognizable claim for relief. The petitioner's appeal was recorded as filed on April 4, 2007.

In his petition and on appeal, the petitioner contends that the indictments upon which he was convicted omitted the specific language of "first degree murder" and "attempted first degree

murder,” and thus failed to provide notice of the offenses alleged to have been committed. The petitioner submits that the circuit court erred in dismissing his petition without appointing counsel and without conducting a hearing because his petition properly alleged that his restraint was unlawful in that the trial court lacked subject matter jurisdiction to hear the charges because the underlying indictments did not specify the charges of first degree murder and attempted first degree murder.

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. Tennessee Code Annotated sections 29-21-101 through 29-21-130 codify the applicable procedures for seeking a writ. However, the grounds upon which a writ of habeas corpus may be issued are very narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record of the proceedings upon which the judgment was rendered that a court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. *See Summers v. State*, 212 S.W.3d 251, 255 (Tenn. 2007); *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. *Archer*, 851 S.W.2d at 163. A void judgment is a facially invalid judgment, clearly showing that a court did not have statutory authority to render such judgment; whereas, a voidable judgment is facially valid, requiring proof beyond the face of the record or judgment to establish its invalidity. *See Taylor*, 995 S.W.2d at 83. The burden is on the petitioner to establish by a preponderance of the evidence, “that the sentence is void or that the confinement is illegal.” *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). Moreover, it is permissible for a court to summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if the petitioner does not state a cognizable claim. *See Summers*, 212 S.W.3d at 260; *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004).

Upon review, it appears that the petitioner filed an untimely notice of appeal. A notice of appeal must be filed within thirty days after the date of entry of the judgment. Tenn. R. App. P. 4(a). However, in criminal cases, notice of appeal is not jurisdictional and may be waived in the interests of justice. *Id.* While the petitioner’s notice of appeal was recorded by the court clerk as filed on April 4, 2007, the notice of appeal also reflects the petitioner’s signature date of March 27, 2007. Therefore, we determine that the interest of justice weighs in favor of waiving the untimely notice of appeal.

Nonetheless, a review of the merits of the petitioner’s appeal leads us to the conclusion that the petitioner has not met his burden of proof in showing either a void judgment or an expired sentence. For an indictment to be challenged in a habeas corpus proceeding, the indictment must be so defective that it fails to vest jurisdiction in the convicting court. *See Wyatt*, 24 S.W.3d at 323. Our supreme court has held that an indictment meets constitutional requirements if it provides sufficient information (1) to enable the accused to know the accusation to which answer is required, (2) to furnish the court adequate basis for the entry of a proper judgment, and (3) to protect the accused from double jeopardy. *State v. Hill*, 954 S.W.2d 725, 727 (Tenn. 1997). In addition, an indictment must state the facts of the offense in ordinary and concise language. *See Tenn. Code*

Ann. § 40-13-202. Indictments patterned after the pertinent language of an applicable statute are ordinarily sufficient for constitutional and statutory purposes. *See State v. Hammonds*, 30 S.W.3d 294, 302 (Tenn. 2000).

Included in the record are what appear to be copies of the indictments. The indictment for first degree murder names the petitioner as a defendant, asserts the date of the offense, and charges that the petitioner “intentionally, deliberately and with premeditation did kill [the victim] in violation of Tennessee Code Annotated § 39-13-202, and against the peace and dignity of the State of Tennessee.” Likewise, the indictment for the attempt to commit first degree murder alleges that the petitioner “did attempt to intentionally, deliberately and with premeditation kill [the victim] in violation of Tennessee Code Annotated § 39-12-101, and against the peace and dignity of the State of Tennessee.” It is clear from our review of the indictments that they meet both the constitutional and statutory requirements and are sufficient to vest jurisdiction in the convicting court. Accordingly, the petitioner failed to state a cognizable claim for habeas corpus relief, and the circuit court did not err in summarily dismissing the petition. The judgment of the circuit court is affirmed.

J.C. McLIN, JUDGE